

### REMARKS

Applicants respectfully requests entry of the remarks submitted herein. No claims have been amended. Reconsideration of the pending application is respectfully requested.

#### The 35 U.S.C. §103 Rejections

Claims 1-5, 7, and 8 stand rejected under 35 U.S.C §103(a) as being unpatentable over Aldeen (U.S. Patent No. 5,882,943) in view of Eberle (U.S. Patent No. 4,591,486). This rejection is respectfully traversed.

The Examiner stated that Aldeen discloses a kit and methods for processing microorganisms from human and animal specimens. The Examiner indicated that the kit comprises a filtration apparatus and preservation fluid dispenser, and that the filtration apparatus includes a specimen receptacle (110) and a collection receptacle (150). According to the Examiner, the specimen receptacle includes a bottom end having a porous material. The Examiner indicated that Eberle teaches introducing a sample into the upper portion of a centrifuge tube by way of a cotton swab. The Examiner concluded that it would have been obvious to one of ordinary skill in the art to substitute the spatula used to collect and transfer a microorganism sample as taught by Aldeen with a swab as taught by Eberle.

Aldeen clearly teaches that the "porous material" at the bottom of the specimen receptable includes two filters; a coarse filter (130) and a fine filter (140) (see, for example, the Abstract, column 6, line 32, and Figures 1-7). In addition, Aldeen is very specific about the pore sizes of each filter (see, for example, column 5, lines 47-62) and the composition of each filter (see, for example, column 8, lines 40-57). On the other hand, Applicants' claims recites that the inner containment vessel has "an aperture." In the paragraph bridging pages 3 and 4, Applicants' specification discloses that an aperture "typically spans between about 0.1 mm to 3.0 mm, but need not be uniform in diameter," and that an aperture can be formed "using a sharp, pointed instrument (e.g., an awl), a boring instrument (e.g., a drill bit), or a sharp blade." Applicants' aperture is quite different from the filters taught by Aldeen.

In addition, Aldeen does not teach that the specimen-transferring device is centrifuged in the apparatus. Applicants submit that if the apparatus of Aldeen were centrifuged with the specimen-

transferring device, the specimen-transferring device would likely damage the filters. Therefore, contrary to the Examiner's statement, it would not have been obvious to substitute the spatula of Aldeen with the swab of Eberle.

Neither reference, alone or in combination, teaches or suggests a swab extraction assembly that includes an inner containment vessel having an aperture. Therefore, Applicants respectfully request that the rejection of claims 1-5, 7, and 8 under 35 U.S.C. §103(a) be withdrawn.

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Aldeen and Eberle and further in view of Moore, Jr. et al. (U.S. Patent No. 5,498,395). Applicants respectfully traverse this rejection.

The Aldeen and Eberle references were discussed above. The Examiner asserted that Moore, Jr. et al teaches the importance of using sterile centrifuge tubes for human samples. The Examiner concluded that it would have been obvious to one of ordinary skill in the art to use the sterile centrifuge tubes of Moore, Jr. et al. with the apparatus of Aldeen to alleviate the possibility of contamination.

The Moore, Jr. et al. reference, in combination with Aldeen and Eberle, does not make obvious the independent claim from which claim 6 depends. Independent claims 1 and 4 both require that the inner containment vessel has an aperture. An aperture is not taught or suggested by any of the cited references, either alone or in combination. Therefore, Applicants respectfully request that the rejection of claim 6 under 35 U.S.C. §103(a) be withdrawn.

#### CONCLUSION

Applicants respectfully request allowance of claims 1-8. Please apply any charges or credits to Deposit Account 06-1050.

Date: March 18, 2004  
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Respectfully submitted,

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